

AMENDED IN ASSEMBLY MARCH 24, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 3042

**Introduced by Committee on Public Employees, Retirement and
Social Security (Hernandez (Chair), Mullin, Soto, and Torrico)**

February 25, 2008

An act to amend Section 1094.5 of the Code of Civil Procedure, and to amend Sections 18670, 19175, 19574, 19574.1, 19574.2, 19575, 19576, 19578, 19582, and 19583 of, to repeal Sections 19173.1, 19175.3, 19570.1, 19572.1, 19576.5, 19576.6, 19582.1, and 19582.6 of, and to repeal and add Section 18575 of, the Government Code, relating to civil service.

LEGISLATIVE COUNSEL'S DIGEST

AB 3042, as amended, Committee on Public Employees, Retirement and Social Security. ~~Civil service: notices, appeals, and complaints: service: service.~~

Existing

(1) *Existing* law, with regard to the civil service, generally provides that whenever a notice, paper, or other document, except a subpoena, is directed to be given to or served upon any person or state agency, the notice, paper, or document may be personally served or served by mail to the last known residence or business address of the addressee. Existing law requires that giving of notice of matters to be heard or considered by the State Personnel Board or the Department of Personnel Administration be governed by board or department rule. Existing law provides a specified process for service by mail of the charges in a disciplinary proceeding, the notice of an employee's suspension, and the notice of a probationer's rejection.

This bill would revise and recast these provisions. The bill would require the appointing power to provide service of notice of certain actions, including a disciplinary action, a rejection during probation, a medical action, and various termination actions, by personal service or by mail or express service carrier, pursuant to a specified process. The bill, in permitting service by Express Mail, as specified, and by overnight delivery by express service carrier, would provide that any period of notice or any right or duty to do any act or make any response is extended as specified. The bill would also require service of an appeal or complaint filed with the board to follow this process. The bill would require a signed affidavit, in a specified form, of the person making service as proof of service for all papers, including appeals and complaints. The bill would require additional information on the affidavit if service is made by mail or express service carrier. The bill would delete provisions regarding matters to be heard or considered by the State Personnel Board or the Department of Personnel Administration, described above.

(2) Existing law contains various provisions relating to civil service and employer-employee relations between the state and its employees. Among other things, these provisions include procedures for disciplining state employees, including State Personnel Board investigations and hearings, the review of administrative decisions, and suspensions.

Existing law provides that certain of those disciplinary procedures do not apply to, and provides alternative procedures for, state employees in State Bargaining Unit 8 and state employees in State Bargaining Unit 11 who have been disciplined for positive drug test results and who expressly waive appeal to the State Personnel Board and invoke arbitration proceedings pursuant to a collective bargaining agreement. Existing law also provides that certain of those disciplinary procedures, as they apply to members of State Bargaining Units 8, 12, and 13, are subject to modification pursuant to the terms of a memorandum of understanding between the state employer and that bargaining unit, as specified.

Under existing case law, certain of the above provisions, which permit specified state employees to seek review of disciplinary actions through grievance or arbitration procedures outside of the State Personnel Board, were held to violate the state constitutional mandate that the board review disciplinary actions against state civil service employees.

This bill would repeal the disciplinary procedures described above, and certain other provisions relating to probationary periods, as those

procedures and provisions apply to State Bargaining Units 8, 11, 12, and 13. The bill would make other related changes.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 1094.5 of the Code of Civil Procedure is*
2 *amended to read:*
3 1094.5. (a) Where the writ is issued for the purpose of
4 inquiring into the validity of any final administrative order or
5 decision made as the result of a proceeding in which by law a
6 hearing is required to be given, evidence is required to be taken,
7 and discretion in the determination of facts is vested in the inferior
8 tribunal, corporation, board, or officer, the case shall be heard by
9 the court sitting without a jury. All or part of the record of the
10 proceedings before the inferior tribunal, corporation, board, or
11 officer may be filed with the petition, may be filed with
12 respondent's points and authorities, or may be ordered to be filed
13 by the court. Except when otherwise prescribed by statute, the cost
14 of preparing the record shall be borne by the petitioner. Where the
15 petitioner has proceeded pursuant to Section 68511.3 of the
16 Government Code and the Rules of Court implementing that
17 section and where the transcript is necessary to a proper review of
18 the administrative proceedings, the cost of preparing the transcript
19 shall be borne by the respondent. Where the party seeking the writ
20 has proceeded pursuant to Section 1088.5, the administrative record
21 shall be filed as expeditiously as possible, and may be filed with
22 the petition, or by the respondent after payment of the costs by the
23 petitioner, where required, or as otherwise directed by the court.
24 If the expense of preparing all or any part of the record has been
25 borne by the prevailing party, the expense shall be taxable as costs.
26 (b) The inquiry in such a case shall extend to the questions
27 whether the respondent has proceeded without, or in excess of
28 jurisdiction; whether there was a fair trial; and whether there was
29 any prejudicial abuse of discretion. Abuse of discretion is
30 established if the respondent has not proceeded in the manner
31 required by law, the order or decision is not supported by the
32 findings, or the findings are not supported by the evidence.

1 (c) Where it is claimed that the findings are not supported by
2 the evidence, in cases in which the court is authorized by law to
3 exercise its independent judgment on the evidence, abuse of
4 discretion is established if the court determines that the findings
5 are not supported by the weight of the evidence. In all other cases,
6 abuse of discretion is established if the court determines that the
7 findings are not supported by substantial evidence in the light of
8 the whole record.

9 (d) Notwithstanding subdivision (c), in cases arising from private
10 hospital boards or boards of directors of districts organized
11 pursuant to The Local Hospital District Law, Division 23
12 (commencing with Section 32000) of the Health and Safety Code
13 or governing bodies of municipal hospitals formed pursuant to
14 Article 7 (commencing with Section 37600) or Article 8
15 (commencing with Section 37650) of Chapter 5 of Division 3 of
16 Title 4 of the Government Code, abuse of discretion is established
17 if the court determines that the findings are not supported by
18 substantial evidence in the light of the whole record. However, in
19 all cases in which the petition alleges discriminatory actions
20 prohibited by Section 1316 of the Health and Safety Code, and the
21 plaintiff makes a preliminary showing of substantial evidence in
22 support of that allegation, the court shall exercise its independent
23 judgment on the evidence and abuse of discretion shall be
24 established if the court determines that the findings are not
25 supported by the weight of the evidence.

26 (e) Where the court finds that there is relevant evidence that, in
27 the exercise of reasonable diligence, could not have been produced
28 or that was improperly excluded at the hearing before respondent,
29 it may enter judgment as provided in subdivision (f) remanding
30 the case to be reconsidered in the light of that evidence; or, in cases
31 in which the court is authorized by law to exercise its independent
32 judgment on the evidence, the court may admit the evidence at the
33 hearing on the writ without remanding the case.

34 (f) The court shall enter judgment either commanding respondent
35 to set aside the order or decision, or denying the writ. Where the
36 judgment commands that the order or decision be set aside, it may
37 order the reconsideration of the case in the light of the court's
38 opinion and judgment and may order respondent to take such
39 further action as is specially enjoined upon it by law, but the

1 judgment shall not limit or control in any way the discretion legally
2 vested in the respondent.

3 (g) Except as provided in subdivision (h), the court in which
4 proceedings under this section are instituted may stay the operation
5 of the administrative order or decision pending the judgment of
6 the court, or until the filing of a notice of appeal from the judgment
7 or until the expiration of the time for filing the notice, whichever
8 occurs first. However, no such stay shall be imposed or continued
9 if the court is satisfied that it is against the public interest. The
10 application for the stay shall be accompanied by proof of service
11 of a copy of the application on the respondent. Service shall be
12 made in the manner provided by Title 5 (commencing with Section
13 405) of Part 2 or Chapter 5 (commencing with Section 1010) of
14 Title 14 of Part 2. If an appeal is taken from a denial of the writ,
15 the order or decision of the agency shall not be stayed except upon
16 the order of the court to which the appeal is taken. However, in
17 cases where a stay is in effect at the time of filing the notice of
18 appeal, the stay shall be continued by operation of law for a period
19 of 20 days from the filing of the notice. If an appeal is taken from
20 the granting of the writ, the order or decision of the agency is
21 stayed pending the determination of the appeal unless the court to
22 which the appeal is taken shall otherwise order. Where any final
23 administrative order or decision is the subject of proceedings under
24 this section, if the petition shall have been filed while the penalty
25 imposed is in full force and effect, the determination shall not be
26 considered to have become moot in cases where the penalty
27 imposed by the administrative agency has been completed or
28 complied with during the pendency of the proceedings.

29 (h) (1) The court in which proceedings under this section are
30 instituted may stay the operation of the administrative order or
31 decision of any licensed hospital or any state agency made after a
32 hearing required by statute to be conducted under the
33 Administrative Procedure Act, as set forth in Chapter 5
34 (commencing with Section 11500) of Part 1 of Division 3 of Title
35 2 of the Government Code, conducted by the agency itself or an
36 administrative law judge on the staff of the Office of
37 Administrative Hearings pending the judgment of the court, or
38 until the filing of a notice of appeal from the judgment or until the
39 expiration of the time for filing the notice, whichever occurs first.
40 However, the stay shall not be imposed or continued unless the

1 court is satisfied that the public interest will not suffer and that the
2 licensed hospital or agency is unlikely to prevail ultimately on the
3 merits. The application for the stay shall be accompanied by proof
4 of service of a copy of the application on the respondent. Service
5 shall be made in the manner provided by Title 5 (commencing
6 with Section 405) of Part 2 or Chapter 5 (commencing with Section
7 1010) of Title 14 of Part 2.

8 (2) The standard set forth in this subdivision for obtaining a
9 stay shall apply to any administrative order or decision of an
10 agency that issues licenses pursuant to Division 2 (commencing
11 with Section 500) of the Business and Professions Code or pursuant
12 to the Osteopathic Initiative Act or the Chiropractic Initiative Act.
13 With respect to orders or decisions of other state agencies, the
14 standard in this subdivision shall apply only when the agency has
15 adopted the proposed decision of the administrative law judge in
16 its entirety or has adopted the proposed decision but reduced the
17 proposed penalty pursuant to subdivision (b) of Section 11517 of
18 the Government Code; otherwise the standard in subdivision (g)
19 shall apply.

20 (3) If an appeal is taken from a denial of the writ, the order or
21 decision of the hospital or agency shall not be stayed except upon
22 the order of the court to which the appeal is taken. However, in
23 cases where a stay is in effect at the time of filing the notice of
24 appeal, the stay shall be continued by operation of law for a period
25 of 20 days from the filing of the notice. If an appeal is taken from
26 the granting of the writ, the order or decision of the hospital or
27 agency is stayed pending the determination of the appeal unless
28 the court to which the appeal is taken shall otherwise order. Where
29 any final administrative order or decision is the subject of
30 proceedings under this section, if the petition shall have been filed
31 while the penalty imposed is in full force and effect, the
32 determination shall not be considered to have become moot in
33 cases where the penalty imposed by the administrative agency has
34 been completed or complied with during the pendency of the
35 proceedings.

36 (i) Any administrative record received for filing by the clerk of
37 the court may be disposed of as provided in Sections 1952, 1952.2,
38 and 1952.3.

39 (j) Effective January 1, 1996, this subdivision shall apply to
40 state employees in State Bargaining Unit 5. ~~This subdivision shall~~

1 ~~apply to state employees in State Bargaining Unit 8.~~ For purposes
2 of this section, the court is not authorized to review any disciplinary
3 decisions reached pursuant to Section 19576.1 ~~or 19576.5~~ of the
4 Government Code.

5 ~~(k) This section shall not apply to state employees in State~~
6 ~~Bargaining Unit 11 disciplined or rejected on probation for positive~~
7 ~~drug test results who expressly waive appeal to the State Personnel~~
8 ~~Board and invoke arbitration proceedings pursuant to a State~~
9 ~~Bargaining Unit 11 collective bargaining agreement.~~

10 **SECTION 1.**

11 *SEC. 2.* Section 18575 of the Government Code is repealed.

12 ~~*SEC. 2.*~~

13 *SEC. 3.* Section 18575 is added to the Government Code, to
14 read:

15 18575. (a) Except as otherwise provided in subdivisions (b)
16 and (c), service by mail of any notice, paper, or document to be
17 served upon a person or appointing power shall be made in the
18 manner provided by Sections 1012 and 1013 of the Code of Civil
19 Procedure.

20 (b) (1) The appointing power shall provide service of the
21 following actions by personal service or by mail or express service
22 carrier as provided in this subdivision:

23 (A) Notice of disciplinary action.

24 (B) Notice of rejection during probationary period.

25 (C) Notice of medical action.

26 (D) Notice of nonpunitive action.

27 (E) Notice of career executive assignment termination.

28 (F) Notice of termination with fault of a limited term, seasonal,
29 or temporary authorization appointment.

30 (G) Notice of termination of an appointment under the Limited
31 Examination and Appointment Program.

32 (H) Notice of termination or automatic resignation of a
33 permanent intermittent employee.

34 (I) Notice of absence without leave resignation or separation
35 pursuant to Section 89541 of the Education Code.

36 (2) Service by mail of the notices listed in paragraph (1) shall
37 be made by enclosing the notice in a sealed envelope, addressed
38 to the last known residence address of the employee, and doing
39 any of the following:

1 (A) Deposit in the United States mail with postage fully prepaid,
2 certified with return receipt requested. Service is complete at the
3 time of deposit, but any period of notice or any right or duty to do
4 any act or make any response within any period or on a date certain
5 after the service of the document served by United States mail
6 shall be extended in accordance with subdivision (a) of Section
7 1013 of the Code of Civil Procedure.

8 (B) Deposit in the United States mail with Express Mail postage
9 fully prepaid. Service is complete at the time of deposit, but any
10 period of notice or any right or duty to do any act or make any
11 response within any period or on a date certain after the service
12 of the document served by Express Mail shall be extended by two
13 business days.

14 (C) Providing for overnight delivery, by deposit of the notice
15 in a box or other facility regularly maintained by an express service
16 carrier, or delivery to a courier or driver authorized by an express
17 service carrier to receive documents, in an envelope or package
18 designated by the express service carrier with delivery fees paid
19 or provided for, and with the employee or his or her designated
20 representative required to acknowledge receipt of the notice at the
21 time of delivery. Service is complete at the time of the deposit,
22 but any period of notice or any right or duty to do any act or make
23 any response within any period or on a date certain after the service
24 of the document served by overnight delivery shall be extended
25 by two business days.

26 (c) (1) Service of an appeal or complaint filed with the board
27 shall be made by personal service or by mail or express service
28 carrier as provided in this subdivision.

29 (2) Service by mail of an appeal or complaint filed with the
30 board shall be made by enclosing the notice in a sealed envelope,
31 addressed to the Appeals Division of the State Personnel Board,
32 and doing any of the following:

33 (A) Deposit in the United States mail with postage fully prepaid,
34 certified with return receipt requested. Service is complete at the
35 time of deposit, but any period of notice or any right or duty to do
36 any act or make any response within any period or on a date certain
37 after the service of the document served by United States mail
38 shall be extended in accordance with subdivision (a) of Section
39 1013 of the Code of Civil Procedure.

1 (B) Deposit in the United States mail with Express Mail postage
2 fully prepaid. Service is complete at the time of deposit, but any
3 period of notice or any right or duty to do any act or make any
4 response within any period or on a date certain after the service
5 of the document served by Express Mail shall be extended by two
6 business days.

7 (C) Providing for overnight delivery, by deposit of the appeal
8 or complaint in a box or other facility regularly maintained by an
9 express service carrier, or delivery to a courier or driver authorized
10 by an express service carrier to receive documents, in an envelope
11 or package designated by the express service carrier with delivery
12 fees paid or provided for, and with the authorized representative
13 of the State Personnel Board required to acknowledge receipt of
14 the appeal or complaint at the time of delivery. Service is complete
15 at the time of the deposit, but any period of notice or any right or
16 duty to do any act or make any response within any period or on
17 a date certain after the service of the document served by overnight
18 delivery shall be extended by two business days.

19 (d) (1) Proof of service of all papers, including appeals and
20 complaints, shall be an affidavit stating the title of the papers served
21 or filed, the name and address of the person making the service,
22 and that he or she is over 18 years of age and not a party to the
23 action. The proof of service shall be signed by the person making
24 it and contain the following statement above the signature, below
25 which the declarant's name shall be typed and signed:

26 "I declare under penalty of perjury under the laws of the State
27 of California that the foregoing is true and correct, and this
28 declaration was executed at (city, state) on (date)."

29 (2) (A) If service is made by mail or express service carrier, in
30 addition to the information provided in paragraph (1), the proof
31 of service shall show the date and place of deposit, the name and
32 address of the person served as shown on the mailing envelope,
33 and that the envelope was sealed and deposited in the mail or
34 provided for overnight delivery, as appropriate.

35 (B) A proof of service made in accordance with Section 1013a
36 of the Code of Civil Procedure complies with this paragraph.

37 *SEC. 4. Section 18670 of the Government Code is amended to*
38 *read:*

39 18670. (a) The board may hold hearings and make
40 investigations concerning all matters relating to the enforcement

1 and effect of this part and rules prescribed under this part. It may
2 inspect any state institution, office, or other place of employment
3 affected by this part to ascertain whether this part and the board
4 rules are obeyed.

5 The board shall make investigations and hold hearings at the
6 direction of the Governor or the Legislature or upon the petition
7 of an employee or a citizen concerning the enforcement and effect
8 of this part and to enforce the observance of Article VII of the
9 Constitution and of this part and the rules made under this part.

10 (b) Effective January 1, 1996, this subdivision shall apply only
11 to state employees in State Bargaining Unit 5. For purposes of
12 subdivision (a), any discipline, as defined by Section 19576.1, is
13 not subject to either a board investigation or hearing. Board review
14 shall be limited to acceptance or rejection of discipline imposed
15 pursuant to Section 19576.1.

16 ~~(c) This subdivision shall apply only to state employees in State~~
17 ~~Bargaining Unit 8. For the purposes of subdivision (a), any~~
18 ~~discipline, as defined by the memorandum of understanding or~~
19 ~~Section 19576.5, is not subject to either a board investigation or~~
20 ~~hearing.~~

21 ~~(d) This subdivision shall apply only to state employees in State~~
22 ~~Bargaining Unit 11 who have been disciplined or rejected on~~
23 ~~probation for positive drug test results and who expressly waive~~
24 ~~appeal to the State Personnel Board and invoke arbitration~~
25 ~~proceedings pursuant to a collective bargaining agreement. For~~
26 ~~purposes of subdivision (a) and in the context of positive drug test~~
27 ~~results, any discipline, as defined by the memorandum of~~
28 ~~understanding, and rejections on probation are not subject to either~~
29 ~~a board investigation or a hearing.~~

30 ~~(e) This subdivision shall apply only to state employees in State~~
31 ~~Bargaining Units 8, 12, and 13. If the provisions of this section~~
32 ~~are in conflict with the provisions of a memorandum of~~
33 ~~understanding reached pursuant to Section 3517.5, the~~
34 ~~memorandum of understanding shall be controlling without further~~
35 ~~legislative action, except that if the provisions of the memorandum~~
36 ~~of understanding require the expenditure of funds, the provisions~~
37 ~~may not become effective unless approved by the Legislature in~~
38 ~~the annual Budget Act.~~

39 *SEC. 5. Section 19173.1 of the Government Code is repealed.*

1 ~~19173.1. (a) This section shall apply to state employees in~~
2 ~~State Bargaining Unit 8.~~

3 ~~(b) Any probationer may be rejected by the appointing power~~
4 ~~during the probationary period for reasons relating to the~~
5 ~~probationer's qualifications, the good of the service, or failure to~~
6 ~~demonstrate merit, efficiency, and fitness.~~

7 ~~(c) A rejection during probationary period is effected by the~~
8 ~~service upon the probationer of a written notice of rejection that~~
9 ~~shall include: (1) an effective date for the rejection that shall not~~
10 ~~be later than the last day of the probationary period; and (2) a~~
11 ~~statement of the reasons for the rejection. Service of the notice~~
12 ~~shall be made prior to the effective date of the rejection. Notice of~~
13 ~~rejection shall be served prior to the conclusion of the prescribed~~
14 ~~probationary period. The probationary period may be extended~~
15 ~~when necessary to provide the full notice period required by board~~
16 ~~rule. Within 15 days after the effective date of the rejection, a copy~~
17 ~~thereof shall be filed with the board.~~

18 *SEC. 6. Section 19175 of the Government Code is amended to*
19 *read:*

20 19175. The board at the written request of a rejected
21 probationer, filed within 15 calendar days of the effective date of
22 rejection, may investigate with or without a hearing the reasons
23 for rejection. After investigation, the board may do any of the
24 following:

25 (a) Affirm the action of the appointing power.

26 (b) Modify the action of the appointing power.

27 (c) Restore the name of the rejected probationer to the
28 employment list for certification to any position within the class;
29 provided, that his or her name shall not be certified to the agency
30 by which he or she was rejected, except with the concurrence of
31 the appointing power of that agency.

32 (d) Restore him or her to the position from which he or she was
33 rejected, but this shall be done only if the board determines, after
34 a hearing, that there is no substantial evidence to support the reason
35 or reasons for rejection, or that the rejection was made in fraud or
36 bad faith. At the hearing, the rejected probationer shall have the
37 burden of proof. Subject to rebuttal by the rejected probationer, it
38 shall be presumed that the rejection was free from fraud and bad
39 faith and that the statement of reasons therefor in the notice of
40 rejection is true.

(e) Effective January 1, 1996, this section shall not apply to state employees in State Bargaining Unit 5.

~~(f) Except as provided in subdivision (g), this section shall not apply to state employees in State Bargaining Unit 11 who have been rejected on probation for positive drug test results and who expressly waive appeal to the State Personnel Board and invoke arbitration proceedings pursuant to a collective bargaining agreement.~~

~~(g) Whenever a written request is made under this section by a probationer in State Bargaining Unit 11 who has been rejected for positive drug test results and the memorandum of understanding for employees in State Bargaining Unit 11 has expired, the state employer shall follow the appeal procedures contained in the expired memorandum of understanding for state employees in State Bargaining Unit 11 until a successor agreement is negotiated between the Department of Personnel Administration and the exclusive representative.~~

SEC. 7. Section 19175.3 of the Government Code is repealed.

~~19175.3. (a) Notwithstanding Section 19175, this section shall apply to state employees in State Bargaining Unit 8.~~

~~(b) The board at the written request of a rejected probationer, filed within 15 calendar days of the effective date of rejection, shall only review allegations that the rejection was made for reasons of discrimination as defined for the purposes of subdivision (a) of Section 19702, fraud, or political patronage. If the board determines that the rejected probationer has stated a prima face case of discrimination, fraud, or political patronage, the board may investigate the case with or without a hearing and do any one of the following:~~

~~(1) Affirm the action of the appointing power.~~

~~(2) Modify the action of the appointing power.~~

~~(3) Restore the name of the rejected probationer to the employment list for certification to any position within the class, provided that his or her name shall not be certified to the agency by which he or she was rejected, except with the concurrence of the appointing power thereof.~~

~~(4) Restore the rejected probationer to the position from which he or she was rejected, but this shall be done only if the board determines that there is substantial evidence to support that the rejection was made for reasons of discrimination as defined for~~

1 the purposes of subdivision (a) of Section 19702, fraud, or political
2 patronage. At any such investigation or hearing the rejected
3 probationer shall have the burden of proof; subject to rebuttal by
4 him or her, it shall be presumed that the rejection was free from
5 discrimination, fraud, and political patronage, and that the
6 statement of reasons therefor in the notice of rejection is true.

7 *SEC. 8. Section 19570.1 of the Government Code is repealed.*

8 ~~19570.1.~~ Notwithstanding ~~Section 19570~~, this section shall
9 apply to state employees in State Bargaining Unit 8. As used in
10 this article, “disciplinary action” means dismissal, demotion,
11 suspension, or other disciplinary action. “Disciplinary action” does
12 not include a written or oral reprimand taken against an employee.
13 Reprimands may be considered for the purpose of progressive
14 discipline. This article shall not apply to any disciplinary action
15 affecting managerial employees subject to Article 2 (commencing
16 with Section 19590), except as provided in Sections 19590.5,
17 19592, and 19592.2.

18 *SEC. 9. Section 19572.1 of the Government Code is repealed.*

19 ~~19572.1.~~ (a) Notwithstanding ~~Section 19572~~, this section shall
20 apply to state employees in State Bargaining Unit 8.

21 ~~(b) Disciplinary actions pursuant to Section 19576.5 shall be~~
22 ~~for just cause or one or more of the following causes for discipline:~~

23 ~~(1) Fraud in securing appointment.~~

24 ~~(2) Incompetency.~~

25 ~~(3) Inefficiency.~~

26 ~~(4) Inexcusable neglect of duty.~~

27 ~~(5) Insubordination.~~

28 ~~(6) Dishonesty.~~

29 ~~(7) Drunkenness on duty.~~

30 ~~(8) Intemperance.~~

31 ~~(9) Addiction to the use of controlled substances.~~

32 ~~(10) Inexcusable absence without leave.~~

33 ~~(11) Conviction of a felony or conviction of a misdemeanor~~
34 ~~involving moral turpitude. A plea or verdict of guilty, or a~~
35 ~~conviction following a plea of nolo contendere, to a charge of a~~
36 ~~felony of any offense involving moral turpitude is deemed to be~~
37 ~~a conviction within the meaning of this section.~~

38 ~~(12) Immorality.~~

39 ~~(13) Discourteous treatment of the public or other employees.~~

40 ~~(14) Improper political activity.~~

1 ~~(15) Willful disobedience.~~

2 ~~(16) Misuse of state property.~~

3 ~~(17) Violation of this part or of a board rule.~~

4 ~~(18) Violation of the prohibitions set forth in accordance with~~
5 ~~Section 19990.~~

6 ~~(19) Refusal to take and subscribe any oath or affirmation that~~
7 ~~is required by law in connection with the employment.~~

8 ~~(20) Other failure of good behavior either during or outside of~~
9 ~~duty hours that is of such a nature that it causes discredit to the~~
10 ~~appointing authority of the person's employment.~~

11 ~~(21) Any negligence, recklessness, or intentional act that results~~
12 ~~in the death of a patient of a state hospital serving the mentally~~
13 ~~disabled or the developmentally disabled.~~

14 ~~(22) The use during duty hours, for training or target practice,~~
15 ~~of any material that is not authorized for that use by the appointing~~
16 ~~power.~~

17 ~~(23) Unlawful discrimination, including harassment, on any~~
18 ~~basis listed in subdivision (a) of Section 12940, as those bases are~~
19 ~~defined in Sections 12926 and 12926.1, except as otherwise~~
20 ~~provided in Section 12940, against the public or other employees~~
21 ~~while acting in the capacity of a state employee.~~

22 ~~(24) Unlawful retaliation against any other state officer or~~
23 ~~employee or member of the public who in good faith reports,~~
24 ~~discloses, divulges, or otherwise brings to the attention of, the~~
25 ~~Attorney General or any other appropriate authority, any facts or~~
26 ~~information relative to actual or suspected violation of any law of~~
27 ~~this state or the United States occurring on the job or directly~~
28 ~~related to the job.~~

29 ~~(e) If the provisions of this section are in conflict with the~~
30 ~~provisions of a memorandum of understanding reached pursuant~~
31 ~~to Section 3517.5, the memorandum of understanding shall be~~
32 ~~controlling without further legislative action, except that if any~~
33 ~~provision of that memorandum of understanding requires the~~
34 ~~expenditure of funds, that provision shall become effective only~~
35 ~~if approved by the Legislature in the annual Budget Act.~~

36 *SEC. 10. Section 19574 of the Government Code is amended*
37 *to read:*

38 19574. (a) The appointing power, or its authorized
39 representative, may take adverse action against an employee for
40 one or more of the causes for discipline specified in this article.

1 Adverse action is valid only if a written notice is served on the
2 employee prior to the effective date of the action, as defined by
3 board rule. The notice shall be served upon the employee either
4 personally or by mail and shall include: (1) a statement of the
5 nature of the adverse action; (2) the effective date of the action;
6 (3) a statement of the reasons therefor in ordinary language; (4) a
7 statement advising the employee of the right to answer the notice
8 orally or in writing; and (5) a statement advising the employee of
9 the time within which an appeal must be filed. The notice shall be
10 filed with the board not later than 15 calendar days after the
11 effective date of the adverse action.

12 (b) Effective January 1, 1996, this subdivision shall apply only
13 to state employees in State Bargaining Unit 5. This section shall
14 not apply to discipline as defined by Section 19576.1.

15 ~~(c) This subdivision shall apply only to state employees in State~~
16 ~~Bargaining Unit 8. This section shall not apply to minor discipline,~~
17 ~~as defined by Section 19576.5 or a memorandum of understanding.~~

18 ~~(d) This subdivision shall apply only to state employees in State~~
19 ~~Bargaining Units 8, 12, and 13. If the provisions of this section~~
20 ~~are in conflict with the provisions of a memorandum of~~
21 ~~understanding reached pursuant to Section 3517.5, the~~
22 ~~memorandum of understanding shall be controlling without further~~
23 ~~legislative action, except that if the provisions of the memorandum~~
24 ~~of understanding require the expenditure of funds, the provisions~~
25 ~~may not become effective unless approved by the Legislature in~~
26 ~~the annual Budget Act.~~

27 *SEC. 11. Section 19574.1 of the Government Code is amended*
28 *to read:*

29 19574.1. (a) An employee who has been served with notice
30 of adverse action, or a representative designated by the employee,
31 shall have the right to inspect any documents in the possession of,
32 or under the control of, the appointing power which are relevant
33 to the adverse action taken or which would constitute "relevant
34 evidence" as defined in Section 210 of the Evidence Code. The
35 employee, or the designated representative, shall also have the
36 right to interview other employees having knowledge of the acts
37 or omissions upon which the adverse action was based. Interviews
38 of other employees and inspection of documents shall be at times
39 and places reasonable for the employee and for the appointing
40 power.

1 (b) The appointing power shall make all reasonable efforts
2 necessary to assure the cooperation of any other employees
3 interviewed pursuant to this section.

4 ~~(c) This subdivision shall apply only to state employees in State~~
5 ~~Bargaining Units 8, 12, and 13. If the provisions of this section~~
6 ~~are in conflict with the provisions of a memorandum of~~
7 ~~understanding reached pursuant to Section 3517.5, the~~
8 ~~memorandum of understanding shall be controlling without further~~
9 ~~legislative action, except that if the provisions of the memorandum~~
10 ~~of understanding require the expenditure of funds, the provisions~~
11 ~~may not become effective unless approved by the Legislature in~~
12 ~~the annual Budget Act.~~

13 *SEC. 12. Section 19574.2 of the Government Code is amended*
14 *to read:*

15 19574.2. (a) Any party claiming that his or her request for
16 discovery pursuant to Section 19574.1 has not been complied with
17 may serve and file a petition to compel discovery with the Hearing
18 Office of the State Personnel Board, naming as respondent the
19 party refusing or failing to comply with Section 19574.1. The
20 petition shall state facts showing that the respondent party failed
21 or refused to comply with Section 19574.1, a description of the
22 matters sought to be discovered, the reason or reasons why the
23 matter is discoverable under Section 19574.1, and the ground or
24 grounds of respondent's refusal so far as known to petitioner.

25 (b) The petition shall be served upon respondent party and filed
26 within 14 days after the respondent party first evidenced his or her
27 failure or refusal to comply with Section 19574.1 or within 30
28 days after the request was made and the party has failed to reply
29 to the request, whichever period is longer. However, no petition
30 may be filed within 15 days of the date set for commencement of
31 the administrative hearing, except upon a petition and a
32 determination by the administrative law judge of good cause. In
33 determining good cause, the administrative law judge shall consider
34 the necessity and reasons for the discovery, the diligence or lack
35 of diligence of the moving party, whether the granting of the
36 petition will delay the commencement of the administrative hearing
37 on the date set, and the possible prejudice of the action to any
38 party. The respondent shall have a right to file a written answer to
39 the petition. Any answer shall be filed with the Hearing Office of

1 the State Personnel Board and the petitioner within 15 days of
2 service of the petition.

3 Unless otherwise stipulated by the parties and as provided by
4 this section, the administrative law judge shall review the petition
5 and any response filed by the respondent and issue a decision
6 granting or denying the petition within 20 days after the filing of
7 the petition. Nothing in this section shall preclude the
8 administrative law judge from determining that an evidentiary
9 hearing shall be conducted prior to the issuance of a decision on
10 the petition. In the event that a hearing is ordered, the decision of
11 the administrative law judge shall be issued within 20 days of the
12 closing of the hearing.

13 A party aggrieved by the decision of the administrative law judge
14 may, within 30 days of service of the decision, file a petition to
15 compel discovery in the superior court for the county in which the
16 administrative hearing will be held or in the county in which the
17 headquarters of the appointing power is located. The petition shall
18 be served on the respondent party.

19 (c) If from a reading of the petition the court is satisfied that the
20 petition sets forth good cause for relief, the court shall issue an
21 order to show cause directed to the respondent party; otherwise
22 the court shall enter an order denying the petition. The order to
23 show cause shall be served upon the respondent and his or her
24 attorney of record in the administrative proceeding by personal
25 delivery or certified mail and shall be returnable no earlier than
26 10 days from its issuance nor later than 30 days after the filing of
27 the petition. The respondent party shall have the right to serve and
28 file a written answer or other response to the petition and order to
29 show cause.

30 (d) The court may, in its discretion, order the administrative
31 proceeding stayed during the pendency of the proceeding, and, if
32 necessary, for a reasonable time thereafter to afford the parties
33 time to comply with the court order.

34 (e) Where the matter sought to be discovered is under the
35 custody or control of the respondent party and the respondent party
36 asserts that the matter is not a discoverable matter under Section
37 19574.1, or is privileged against disclosure under Section 19574.1,
38 the court may order lodged with it matters which are provided in
39 subdivision (b) of Section 915 of the Evidence Code and shall
40 examine the matters in accordance with the provisions thereof.

1 (f) The court shall decide the case on the matters examined by
2 the court in camera, the papers filed by the parties, and any oral
3 argument and additional evidence as the court may allow.

4 (g) Unless otherwise stipulated by the parties, the court shall
5 no later than 45 days after the filing of the petition file its order
6 denying or granting the petition; provided, however, that the court
7 may on its own motion for good cause extend the time an additional
8 45 days. The order of the court shall be in writing setting forth the
9 matters or parts the petitioner is entitled to discover under Section
10 19574.1. A copy of the order shall forthwith be served by mail by
11 the clerk upon the parties. Where the order grants the petition in
12 whole or in part, the order shall not become effective until 10 days
13 after the date the order is served by the clerk. Where the order
14 denies relief to the petitioning party, the order shall be effective
15 on the date it is served by the clerk.

16 (h) The order of the superior court shall be final and, except for
17 this subdivision, shall not be subject to review by appeal. A party
18 aggrieved by the order, or any part thereof, may within 30 days
19 after the service of the superior court's order serve and file in the
20 district court of appeal for the district in which the superior court
21 is located, a petition for a writ of mandamus to compel the superior
22 court to set aside, or otherwise modify, its order. Where a review
23 is sought from an order granting discovery, the order of the trial
24 court and the administrative proceeding shall be stayed upon the
25 filing of the petition for writ of mandamus; provided, however,
26 that the court of appeal may dissolve or modify the stay thereafter,
27 if it is in the public interest to do so. Where the review is sought
28 from a denial of discovery, neither the trial court's order nor the
29 administrative proceeding shall be stayed by the court of appeal
30 except upon a clear showing of probable error.

31 (i) Where the superior court finds that a party or his or her
32 attorney, without substantial justification, failed or refused to
33 comply with Section 19574.1, or, without substantial justification,
34 filed a petition to compel discovery pursuant to this section, or,
35 without substantial justification, failed to comply with any order
36 of court made pursuant to this section, the court may award court
37 costs and reasonable attorney fees to the opposing party. Nothing
38 in this subdivision shall limit the power of the superior court to
39 compel obedience to its orders by contempt proceedings.

1 ~~(j) This subdivision shall apply only to state employees in State~~
2 ~~Bargaining Units 8, 12, and 13. If the provisions of this section~~
3 ~~are in conflict with the provisions of a memorandum of~~
4 ~~understanding reached pursuant to Section 3517.5, the~~
5 ~~memorandum of understanding shall be controlling without further~~
6 ~~legislative action, except that if the provisions of the memorandum~~
7 ~~of understanding require the expenditure of funds, the provisions~~
8 ~~may not become effective unless approved by the Legislature in~~
9 ~~the annual Budget Act.~~

10 *SEC. 13. Section 19575 of the Government Code is amended*
11 *to read:*

12 19575. ~~(a)~~ The employee has 30 calendar days after the
13 effective date of the adverse action to file with the board a written
14 answer to the notice of adverse action. The answer shall be deemed
15 to be a denial of all of the allegations of the notice of adverse action
16 not expressly admitted and a request for hearing or investigation
17 as provided in this article. With the consent of the board or its
18 authorized representative an amended answer may subsequently
19 be filed. If the employee fails to answer within the time specified
20 or after answer withdraws his or her appeal the adverse action
21 taken by the appointing power shall be final. A copy of the
22 employee's answer and of any amended answer shall promptly be
23 given by the board to the appointing power.

24 ~~(b) This subdivision shall apply only to state employees in State~~
25 ~~Bargaining Units 8, 12, and 13. If the provisions of this section~~
26 ~~are in conflict with the provisions of a memorandum of~~
27 ~~understanding reached pursuant to Section 3517.5, the~~
28 ~~memorandum of understanding shall be controlling without further~~
29 ~~legislative action, except that if the provisions of the memorandum~~
30 ~~of understanding require the expenditure of funds, the provisions~~
31 ~~may not become effective unless approved by the Legislature in~~
32 ~~the annual Budget Act.~~

33 *SEC. 14. Section 19576 of the Government Code is amended*
34 *to read:*

35 19576. Whenever an answer is filed by an employee who has
36 been suspended without pay for five days or less, or who has
37 received a formal reprimand or up to a one-step reduction in pay
38 for four months or less, the board or its authorized representative
39 shall make an investigation with or without a hearing as it deems
40 necessary; ~~however.~~ *However,* in the event an employee receives

1 one of these actions under subdivision (r) of Section 19572 for
2 behavior or acts outside of duty hours, ~~he the employee~~ shall, if
3 he *or she* files an answer to the action, be afforded a hearing; ~~or~~
4 ~~if he~~. *If the employee* receives one of the cited actions in more than
5 three instances in any 12-month period, ~~he the employee~~ shall,
6 upon each additional action within the same 12-month period, be
7 afforded a hearing if ~~he the employee~~ files an answer to the action.

8 If the provisions of this section concerning whether a hearing
9 should be held are in conflict with the provisions of a memorandum
10 of understanding reached pursuant to the State Employer-Employee
11 Relations Act (SEERA), commencing with Section 3512, the
12 memorandum of understanding shall be controlling without further
13 legislative action, except that if ~~such those~~ provisions of a
14 memorandum of understanding require the expenditure of funds,
15 the provisions shall not become effective unless approved by the
16 Legislature in the annual Budget Act.

17 *SEC. 15. Section 19576.5 of the Government Code is repealed.*

18 ~~19576.5. Notwithstanding Section 19576, this section applies~~
19 ~~only to state employees in State Bargaining Unit 8.~~

20 ~~(a) Minor discipline is a suspension without pay for five days~~
21 ~~or less or up to a 5-percent reduction in pay for five months or~~
22 ~~less. Whenever an answer is filed by an employee who is subject~~
23 ~~to minor discipline, and the memorandum of understanding for~~
24 ~~state employees in State Bargaining Unit 8 has expired, the state~~
25 ~~employer shall follow the minor discipline appeal procedures~~
26 ~~contained in the expired memorandum of understanding for state~~
27 ~~employees in State Bargaining Unit 8 until a successor agreement~~
28 ~~is negotiated between the Department of Personnel Administration~~
29 ~~and the exclusive representative. However, if an employee receives~~
30 ~~one of the cited actions in more than three instances in any~~
31 ~~12-month period, he or she shall, upon each additional action within~~
32 ~~the same 12-month period, be afforded a hearing before the State~~
33 ~~Personnel Board if he or she files an answer to the action.~~

34 ~~(b) The State Personnel Board shall not have the authority stated~~
35 ~~in subdivision (a) with regard to written or oral reprimands.~~
36 ~~Reprimands shall not be grievable or appealable by the receiving~~
37 ~~employee by any means. Rejections on probation shall not be~~
38 ~~grievable or appealable by the receiving employee by any means~~
39 ~~except as provided in Section 19175.1.~~

1 ~~(e) The appointing power shall not impose any discipline in a~~
2 ~~manner that is inconsistent with “salary basis test” against an~~
3 ~~employee employed in an executive, administrative, or professional~~
4 ~~capacity and whose duties exempt him or her from the wage and~~
5 ~~hour provisions of the federal Fair Labor Standards Act as set forth~~
6 ~~pursuant to Section 13(a)(1) of the Fair Labor Standards Act of~~
7 ~~1938, as amended (29 U.S.C. Sec. 213(a)(1)), and in Part 54 of~~
8 ~~Title 29 of the Code of Federal Regulations, as defined and~~
9 ~~delimited on the effective date of this section, and as those~~
10 ~~provisions may be amended in the future by the Administrator of~~
11 ~~the Wage and Hour Division of the United States Department of~~
12 ~~Labor.~~

13 ~~(d) Disciplinary action taken pursuant to this section shall not~~
14 ~~be subject to any of the following provisions: Sections 19180,~~
15 ~~19574.1, 19574.2, 19575, 19575.5, 19579, 19580, 19581, 19581.5,~~
16 ~~19582, 19583, and 19587, and State Personnel Board Rules 51.1~~
17 ~~to 51.9, inclusive, 52, and 52.1 to 52.5, inclusive.~~

18 ~~(e) Notwithstanding any other law or rule, if any provision of~~
19 ~~this section is in conflict with any provision of the memorandum~~
20 ~~of understanding reached pursuant to Section 3517.5, the~~
21 ~~memorandum of understanding shall be controlling without further~~
22 ~~legislative action, except that if provisions of a memorandum of~~
23 ~~understanding require the expenditure of funds, those provisions~~
24 ~~shall not become effective unless approved by the Legislature in~~
25 ~~the annual Budget Act.~~

26 ~~(f) If the State Personnel Board establishes regulations to~~
27 ~~implement this section, the regulations shall be consistent with the~~
28 ~~expired memorandum of understanding for state employees in~~
29 ~~State Bargaining Unit 8 and the Ralph C. Dills Act (Part 10.3~~
30 ~~(commencing with Section 3512) of Division 4 of Title 1).~~

31 ~~SEC. 16. Section 19576.6 of the Government Code is repealed.~~

32 ~~19576.6. This section shall apply only to state employees in~~
33 ~~State Bargaining Unit 11 who have been disciplined for positive~~
34 ~~drug test results and who expressly waive appeal to the State~~
35 ~~Personnel Board and invoke arbitration proceedings pursuant to a~~
36 ~~collective bargaining agreement.~~

37 ~~(a) Notwithstanding Section 19576, the State Personnel Board~~
38 ~~shall not have the authority stated in subdivision (a) of that section.~~

39 ~~(b) Whenever an answer is filed by an employee and the~~
40 ~~memorandum of understanding for employees in State Bargaining~~

1 Unit 11 has expired, the state employer shall follow the appeal
2 procedures contained in the expired memorandum of understanding
3 for state employees in State Bargaining Unit 11 until a successor
4 agreement is negotiated between the Department of Personnel
5 Administration and the exclusive representative.

6 (e) ~~Notwithstanding any other law or rule, if the provisions of~~
7 ~~this section are in conflict with the provisions of the memorandum~~
8 ~~of understanding reached pursuant to Section 3517.5, the~~
9 ~~memorandum of understanding shall be controlling without further~~
10 ~~legislative action, except that if the provisions of the memorandum~~
11 ~~of understanding require the expenditure of funds, the provisions~~
12 ~~shall not become effective unless approved by the Legislature in~~
13 ~~the annual Budget Act.~~

14 *SEC. 17. Section 19578 of the Government Code is amended*
15 *to read:*

16 19578. (a) ~~Except as provided in Section 19576, whenever an~~
17 ~~answer is filed to an adverse action, the board or its authorized~~
18 ~~representative shall within a reasonable time hold a hearing. The~~
19 ~~board shall notify the parties of the time and place of the hearing.~~
20 ~~The hearing shall be conducted in accordance with the provisions~~
21 ~~of Section 11513 of the Government Code, except that the~~
22 ~~employee and other persons may be examined as provided in~~
23 ~~Section 19580, and the parties may submit all proper and competent~~
24 ~~evidence against or in support of the causes.~~

25 (b) ~~This subdivision shall apply only to state employees in State~~
26 ~~Bargaining Units 8, 12, and 13. If the provisions of this section~~
27 ~~are in conflict with the provisions of a memorandum of~~
28 ~~understanding reached pursuant to Section 3517.5, the~~
29 ~~memorandum of understanding shall be controlling without further~~
30 ~~legislative action, except that if the provisions of the memorandum~~
31 ~~of understanding require the expenditure of funds, the provisions~~
32 ~~may not become effective unless approved by the Legislature in~~
33 ~~the annual Budget Act.~~

34 *SEC. 18. Section 19582 of the Government Code is amended*
35 *to read:*

36 19582. (a) Hearings may be held by the board, or by any
37 authorized representative, but the board shall render the decision
38 that in its judgment is just and proper.

39 During a hearing, after the appointing authority has completed
40 the opening statement or the presentation of evidence, the

1 employee, without waiving his or her right to offer evidence in the
2 event the motion is not granted, may move for a dismissal of the
3 charges.

4 If it appears that the evidence presented supports the granting
5 of the motion as to some but not all of the issues involved in the
6 action, the board or the authorized representative shall grant the
7 motion as to those issues and the action shall proceed as to the
8 issues remaining. Despite the granting of the motion, no judgment
9 shall be entered prior to a final determination of the action on the
10 remaining issues, and shall be subject to final review and approval
11 by the board.

12 (b) If a contested case is heard by an authorized representative,
13 he or she shall prepare a proposed decision in a form that may be
14 adopted as the decision in the case. A copy of the proposed decision
15 shall be filed by the board as a public record and furnished to each
16 party within 10 days after the proposed decision is filed with the
17 board. The board itself may adopt the proposed decision in its
18 entirety, may remand the proposed decision, or may reduce the
19 adverse action set forth therein and adopt the balance of the
20 proposed decision.

21 (c) If the proposed decision is not remanded or adopted as
22 provided in subdivision (b), each party shall be notified of the
23 action, and the board itself may decide the case upon the record,
24 including the transcript, with or without taking any additional
25 evidence, or may refer the case to the same or another authorized
26 representative to take additional evidence. If the case is so assigned
27 to an authorized representative, he or she shall prepare a proposed
28 decision as provided in subdivision (b) upon the additional
29 evidence and the transcript and other papers that are part of the
30 record of the prior hearing. A copy of the proposed decision shall
31 be furnished to each party. The board itself shall decide no case
32 provided for in this subdivision without affording the parties the
33 opportunity to present oral and written argument before the board
34 itself. If additional oral evidence is introduced before the board
35 itself, no board member may vote unless he or she heard the
36 additional oral evidence.

37 (d) In arriving at a decision or a proposed decision, the board
38 or its authorized representative may consider any prior suspension
39 or suspensions of the appellant by authority of any appointing
40 power, or any prior proceedings under this article.

(e) The decision shall be in writing and contain findings of fact and the adverse action, if any. The findings may be stated in the language of the pleadings or by reference thereto. Copies of the decision shall be served on the parties personally or by mail.

~~(f) This section shall not apply to minor discipline, as defined in a memorandum of understanding or by Section 19576.5, for state employees in State Bargaining Unit 8.~~

~~(g) This section shall not apply to state employees in State Bargaining Unit 11 who have been disciplined for positive drug test results and who expressly waive appeal to the State Personnel Board and invoke arbitration proceedings pursuant to a collective bargaining agreement.~~

~~(h) This subdivision shall apply only to state employees in State Bargaining Units 8, 12, and 13. If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of the memorandum of understanding require the expenditure of funds, the provisions may not become effective unless approved by the Legislature in the annual Budget Act.~~

SEC. 19. Section 19582.1 of the Government Code is repealed.

~~19582.1. Notwithstanding Section 19582, this section shall apply to state employees in State Bargaining Unit 8.~~

~~(a) The board's review of decisions of minor discipline, as defined by a memorandum of understanding or by Section 19576.5, shall be limited to either adopting the penalty of the proposed decision or revoking the disciplinary action in its entirety.~~

~~(b) The board's review of decisions of discipline, including minor discipline, shall not impose any discipline against an employee that would jeopardize the employee's status under the federal Fair Labor Standards Act, as set forth pursuant to Section 13(a)(1) of The Fair Labor Standards Act of 1938, as amended (29 U.S.C. Sec. 213(a)(1)) and in Part 54 of Title 29 of the Code of Federal Regulations, as defined and delimited on the effective date of this section and as those provisions may be amended in the future.~~

~~(c) If provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling~~

1 without further legislative action, except that if the provisions of
2 a memorandum of understanding require the expenditure of funds,
3 the provision shall not become effective unless approved by the
4 Legislature in the annual Budget Act.

5 *SEC. 20. Section 19582.6 of the Government Code is repealed.*

6 ~~19582.6. (a) Notwithstanding Section 19582.5, this section~~
7 ~~shall apply only to state employees in State Bargaining Unit 8.~~

8 ~~(b) The board may designate certain of its decisions as~~
9 ~~precedents. Precedential decisions shall not be subject to Chapter~~
10 ~~3.5 (commencing with Section 11340) of Part 1 of Division 3. The~~
11 ~~board may provide by rule for the reconsideration of a previously~~
12 ~~issued decision to determine whether or not it shall be designated~~
13 ~~as a precedent decision. All decisions designated as precedents~~
14 ~~shall be published in a manner determined by the board.~~

15 ~~(c) For the purpose of this section, a decision reached pursuant~~
16 ~~to Section 19576.2 is not subject to board precedential decision,~~
17 ~~and the board may not adopt that decision as a precedential~~
18 ~~decision.~~

19 *SEC. 21. Section 19583 of the Government Code is amended*
20 *to read:*

21 ~~19583. (a) The board shall render a decision within a~~
22 ~~reasonable time after the hearing or investigation. The adverse~~
23 ~~action taken by the appointing power shall stand unless modified~~
24 ~~or revoked by the board. If the board finds that the cause or causes~~
25 ~~for which the adverse action was imposed were insufficient or not~~
26 ~~sustained, or that the employee was justified in the course of~~
27 ~~conduct upon which the causes were based, it may modify or~~
28 ~~revoke the adverse action and it may order the employee returned~~
29 ~~to his or her position with appropriate restoration of backpay and~~
30 ~~lost benefits either as of the date of the adverse action or as of such~~
31 ~~later date as it may specify. The decision of the board shall be~~
32 ~~entered upon the minutes of the board and the official roster.~~

33 ~~(b) This subdivision shall apply only to state employees in State~~
34 ~~Bargaining Units 8, 12, and 13. If the provisions of this section~~
35 ~~are in conflict with the provisions of a memorandum of~~
36 ~~understanding reached pursuant to Section 3517.5, the~~
37 ~~memorandum of understanding shall be controlling without further~~
38 ~~legislative action, except that if the provisions of the memorandum~~
39 ~~of understanding require the expenditure of funds, the provisions~~

- 1 ~~may not become effective unless approved by the Legislature in~~
- 2 ~~the annual Budget Act.~~

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